



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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September 15, 2016

Approved OMB 2020-0003
Approval expires 02/28/2017

By Certified U.S. Mail; Return Receipt Requested

Mr. Kerry Gee
Vice President
United Park City Mines Company
P.O. Box 1450
Park City, Utah 84060

Mr. Kevin Murray
Holland & Hart LLP
222 South Main Street
Suite 2200
Salt Lake City, Utah 84101

Re: Request for substantiation, documents pertaining to Richardson Flat Tailings Site, July 23 2015
Submission to EPA

Dear Mr. Gee and Mr. Murray:

The U.S. Environmental Protection Agency ("EPA" or "Agency") has received a request under the FOIA for certain records United Park City Mines submitted to EPA pertaining to the Richardson Flat Tailings Site and Uintah Mining District Site. You have claimed some of that information to be confidential business information ("CBI"). Specifically, you have claimed a letter sent to EPA on July 5, 2016, to be CBI. Under the EPA regulations at 40 C.F.R. Part 2, Subpart B, the FOIA request has been initially denied to afford you an opportunity to provide comments to substantiate your claim as described below.

This letter is to notify you that the EPA Office of Regional Counsel will be making a final confidentiality determination concerning the information you have claimed as CBI. If you feel that some or all of the information is entitled to confidential treatment, you must make the showings below with specific reference to those portions of the information you consider confidential.

Please be specific by page (including Bates Stamp, if applicable), paragraph, and sentence when identifying and substantiating the information subject to your claim. Where your claim, as originally made or as modified by your response to this letter, does not include all information on a page, please attach a copy of each such page with brackets around the text that you claim to be CBI. Any information

not specifically identified as subject to a confidentiality claim and substantiated as such in your response to this letter may be disclosed without further notice to you. Please note that if a page, document, group or class of documents claimed by you to be CBI contains a significant amount of information which our Office of Regional Counsel determines is not CBI, your CBI claim regarding that page, document, group, or class of documents may be denied.

For each item or class of information that you continue to claim as CBI, please answer the following questions, giving as much detail as possible. Your comments in response to these questions will be used by the EPA to determine whether the information has been shown to be entitled to confidential treatment:

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.
2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?
3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information be considered confidential?
4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? If so, specify which.
5. Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
6. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
7. For each item or category of information claimed as confidential, *explain with specificity* why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?
8. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.
9. Whether you assert the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.

10. If you believe any information to be (a) trade secret(s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret(s).
11. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).

Please note that *you bear the burden of substantiating your confidentiality claim*. Generalized or conclusory statements will be given little or no weight in EPA's determination on the confidentiality of the information you claim to be CBI.

Your comments must be postmarked or hand delivered to this office, or emailed to Piggott.amelia@epa.gov, by the 15th working day after your receipt of this letter. You may seek an extension of time to submit your comments to this office, but the request must be made before the end of the 15-day period. Except in extraordinary circumstances, no extension will be approved. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim or claims, and the EPA may release the information.

If you wish to claim any information that you provide in your response to this letter to itself be confidential, you must mark the response "**CONFIDENTIAL**" or with a similar designation, and must bracket all text in the response that you so claim. Information so designated will be disclosed by the EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information provided in your response as confidential, it may be made available to the public without further notice to you.

Should you have any questions concerning this matter, please call me at 303.312.6410.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amelia Piggott", with a stylized flourish at the end.

Amelia Piggott
Attorney
U.S. EPA Region 8

From: Kevin Murray
To: [Piggott, Amelia](#)
Cc: [Kerry C. Gee \(kcgee@unitedpark.com\)](mailto:kcgee@unitedpark.com)
Subject: Request for substantiation, documents pertaining to Richardson Flat Tailings Site, July 23, 2015 Submission to EPA
Date: Wednesday, October 12, 2016 5:09:17 PM

Amelia:

United Park City Mines Company ("UPCM") is in receipt of your *Request for substantiation, documents pertaining to Richardson Flat Tailings Site, July 23, 2015 Submission to EPA*, specifically with regard to a letter sent to EPA on July 5, 2016. UPCM has reviewed the Request and the July 5, 2016 letter provided through the Submission and designated as Confidential Business Information. While UPCM continues to believe that the letter was properly designated, UPCM is choosing to withdraw the designation for purposes of the Request. This withdrawal is without prejudice, waiver, or the establishment of precedent regarding any other submissions that have been made or that may be made in any matter.

Kevin

Kevin R Murray

Partner

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CONFIDENTIALITY NOTICE: This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this e-mail. Thank you.



Kevin R. Murray
Phone (801) 799-5919
krmurray@hollandhart.com

July 5, 2016

Amelia Piggott
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

Confidential Settlement Communications
Subject to Rule 408
Confidential Business Information

Re: Matters Related to EPA's Letter of June 22, 2016 (Letter)

Dear Amelia:

This is in follow up to EPA's Letter and our June 15, 2016 meeting at EPA. As a general matter, please note that United Park disagrees with some of the assertions or inferences in the Letter regarding procedures, timing, compliance, applicable notice requirements and dates, and reserves accordingly.

Response Costs

As per prior letters between United Park and EPA, the parties considered United Park's February 5, 2016 correspondence as the invocation of informal dispute resolution. EPA responded to that correspondence on June 6, and there are items still to be discussed by the parties. United Park can attend the informal conference call offered in the Letter on July 6 at 1:30 p.m.

For convenience, attached are the questions and items transmitted on February 5. We anticipate the parties will be able to complete their informal discussion on July 6 so United Park can determine which items are in dispute and thereafter submit them for formal dispute resolution.

Reimbursement Request

United Park renews its requests of May 4 and June 20, 2016, that this dispute resolution be submitted to an EPA management official capable of providing a fair and neutral evaluation for a written decision. United Park is of the impression that the Enforcement Division's position has been thoroughly vetted within Region 8, and that the Assistant Regional Administrator for the Office of Ecosystems Protections and Remediation participated with Region 8 staff in their decision to decline United Park's present reimbursement request and therefore cannot be neutral.

Accordingly, United Park renews the request that this matter be heard by someone, other than at Region 8, who has not been involved in this matter. This is not a request to modify the AOC, which provides that "an EPA management official at the Assistant Regional Administrator level or higher will issue a written decision on the dispute", with no requirement that the official be from Region 8.

Notice of Intent

In United Park's request for a meeting with a neutral EPA official, United Park indicated it anticipated submitting information in advance of that meeting, and requested an informal meeting with staff prior to submitting anything in writing. The request for the informal meeting ahead of any written submittal was in response to EPA's correspondence that invited United Park to let EPA know if it would like an informal meeting with staff prior to submitting anything in writing. United Park renews its request for the informal meeting ahead of any written submittal.

Information Request and Business Plan

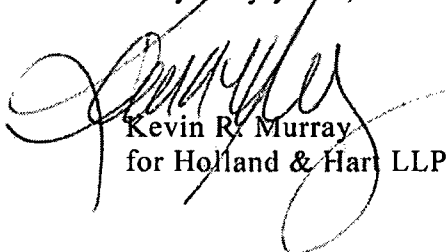
United Park is continuing to compile information that is further responsive to EPA's information request, consistent with the approach discussed during our June 15 meeting. At that meeting, United Park provided several years' worth of financial statements as part of its response. United Park also presented a current Business Plan demonstrating that United Park has performed and can continue to perform the work under the AOC's.

Based on EPA's comments, United Park has been assembling additional Business Plan information. To assure continuation and success of the ongoing work, it would be highly beneficial to meet again and advance the United Park Business Plan discussion.

United Park remains in compliance with its obligations to EPA under existing orders, and performance of the work is ongoing. It is in the best interests of all parties that EPA support United Park in those activities that contribute to the work.

We appreciate the agency's interest in resolving pending matters, and in moving all processes forward in a way that facilitates United Park's ongoing performance of the work, which is United Park's primary objective.

Very truly yours,



Kevin R. Murray
for Holland & Hart LLP

KRM/ju

cc: Andrea Madigan

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